

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1348

Introduced by Assembly Member Blakeslee

February 27, 2009

~~An act to amend Section 399.15 of, and to add Article 2 (commencing with Section 2846) to Chapter 8 of Part 2 of Division 1 of, An act to amend Section 454.5 of, and to add Section 454.51 to, the Public Utilities Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1348, as amended, Blakeslee. ~~Renewable energy resources: combined heat and power systems. Electrical corporation procurement of electricity.~~

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). *Existing law requires that an electrical corporation's proposed procurement plan include certain elements, including a showing that the electrical corporation will, in order to fulfill its unmet resource needs, until a 20% renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1% per year of the*

electricity sold by the electrical corporation is generated from eligible renewable energy resources, provided sufficient funds are made available to cover certain above-market costs. The RPS program requires, in order to fulfill unmet long-term resource needs, that the commission establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, subject to certain cost limitations, so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

This bill would require than an electrical corporation's proposed procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the renewables portfolio standard. The bill would additionally require that an electrical corporation's proposed procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, procure resources in a manner that complies with the requirements for reducing emissions of greenhouse gases adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006. The bill would require each electrical corporation to file with the commission a proposed fossil fuel procurement plan that complies with the requirements for reducing emissions of greenhouse gases adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006, require the commission to review and accept, modify, or reject each electrical corporation's fossil fuel procurement plan, and require each electrical corporation to review and update its fossil fuel procurement plan as the commission determines to be necessary.

~~This bill would require, in order to fulfill unmet long-term resource needs and to achieve the reductions in emissions of greenhouse gases required by the California Global Warming Solutions Act of 2006, that the commission establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total weighted kilowatthours sold to their retail end-use customers each calendar year, subject to certain cost limitations, so that 20% of its retail sales are procured from eligible renewable energy~~

resources no later than December 31, 2010. The bill would require that total kilowatthours sold to retail end-use customers that are generated using fossil fuels be weighted linearly based upon a rating of the emissions of greenhouse gases per megawatthour with a base, used for comparison, based upon the greenhouse gases emission performance standard. The bill would provide a methodology for weighting of electricity generated by a combined heat and power system that is an eligible facility, as defined.

The bill would require the commission to credit electricity generated by an eligible facility for onsite use as energy efficiency for the purposes of an electrical corporation's procurement plan. The bill would require the commission to prohibit the imposition of certain charges on (1) the electricity generated by an eligible facility to meet an eligible customer-generator's onsite electrical load, if the eligible facility commences operation after January 1, 2010, and (2) the increased amount of electricity generated as a result of efficiency improvements to meet an eligible customer-generator's onsite electrical load, undertaken after January 1, 2010, on an eligible facility that commenced operation prior to that date. The bill would authorize an eligible customer-generator to construct and operate private electrical distribution facilities that are owned and operated by the eligible customer-generator and to sell excess electricity from an eligible facility to up to three other corporations within a 3-mile radius of the eligible facility without subjecting the eligible facility and the distribution system to regulation as a public utility, and would require the commission to accord the distribution facilities the same treatment for safety, zoning, land use, and other legal privileges as apply or would apply to the facilities of the electrical corporation, with certain exceptions. The bill would require the commission to prohibit an electrical corporation from imposing certain charges on the electricity generated by the eligible facility and sold to other corporations. The bill would require that any standby rates or charges maintained by the commission for customers receiving electricity from an eligible facility, are based only upon assumptions that are supported by factual data.

Under existing law, a violation of the *Public Utilities Act* or of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill *are within the act and* require action by the commission to implement its requirements, a violation of these

provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 454.5 of the Public Utilities Code is
2 amended to read:

3 454.5. (a) The commission shall specify the allocation of
4 electricity, including quantity, characteristics, and duration of
5 electricity delivery, that the Department of Water Resources shall
6 provide under its power purchase agreements to the customers of
7 each electrical corporation, which shall be reflected in the electrical
8 corporation's proposed procurement plan. Each electrical
9 corporation shall file a proposed procurement plan with the
10 commission not later than 60 days after the commission specifies
11 the allocation of electricity. The proposed procurement plan shall
12 specify the date that the electrical corporation intends to resume
13 procurement of electricity for its retail customers, consistent with
14 its obligation to serve. After the commission's adoption of a
15 procurement plan, the commission shall allow not less than 60
16 days before the electrical corporation resumes procurement
17 pursuant to this section.

18 (b) An electrical corporation's proposed procurement plan shall
19 include, but not be limited to, all of the following:

20 (1) An assessment of the price risk associated with the electrical
21 corporation's portfolio, including any utility-retained generation,
22 existing power purchase and exchange contracts, and proposed
23 contracts or purchases under which an electrical corporation will
24 procure electricity, electricity demand reductions, and
25 electricity-related products and the remaining open position to be
26 served by spot market transactions.

27 (2) A definition of each electricity product, electricity-related
28 product, and procurement related financial product, including

1 support and justification for the product type and amount to be
2 procured under the plan.

3 (3) The duration of the plan.

4 (4) The duration, timing, and range of quantities of each product
5 to be procured.

6 (5) A competitive procurement process under which the
7 electrical corporation may request bids for procurement-related
8 services, including the format and criteria of that procurement
9 process.

10 (6) An incentive mechanism, if any incentive mechanism is
11 proposed, including the type of transactions to be covered by that
12 mechanism, their respective procurement benchmarks, and other
13 parameters needed to determine the sharing of risks and benefits.

14 (7) The upfront standards and criteria by which the acceptability
15 and eligibility for rate recovery of a proposed procurement
16 transaction will be known by the electrical corporation prior to
17 execution of the transaction. This shall include an expedited
18 approval process for the commission's review of proposed contracts
19 and subsequent approval or rejection thereof. The electrical
20 corporation shall propose alternative procurement choices in the
21 event a contract is rejected.

22 (8) Procedures for updating the procurement plan.

23 (9) A showing that the procurement plan will achieve the
24 following:

25 (A) ~~The electrical corporation will, in order to fulfill its unmet~~
26 ~~resource needs and in furtherance of Section 701.3, until a 20~~
27 ~~percent renewable resources portfolio is achieved, procure~~
28 ~~renewable energy resources with the goal of ensuring that at least~~
29 ~~an additional 1 percent per year of the electricity sold by the~~
30 ~~electrical corporation is generated from renewable energy~~
31 ~~resources, provided sufficient funds are made available pursuant~~
32 ~~to Sections 399.6 and 399.15, to cover the above-market costs for~~
33 ~~new renewable energy resources needs, procure resources from~~
34 ~~eligible renewable energy resources in an amount sufficient to~~
35 ~~meet its procurement requirements pursuant to the renewables~~
36 ~~portfolio standard adopted pursuant to Article 16 (commencing~~
37 ~~with Section 399.11) of Chapter 2.3.~~

38 (B) The electrical corporation will create or maintain a
39 diversified procurement portfolio consisting of both short-term

1 and long-term electricity and electricity-related and demand
2 reduction products.

3 (C) The electrical corporation will first meet its unmet resource
4 needs through all available energy efficiency and demand reduction
5 resources that are cost effective, reliable, and feasible.

6 *(D) The electrical corporation will meet its unmet resource*
7 *needs in a manner that complies with the requirements for reducing*
8 *emissions of greenhouse gases adopted by the State Air Resources*
9 *Board pursuant to the California Global Warming Solutions Act*
10 *of 2006 (Division 25.5 (commencing with Section 38500) of the*
11 *Health and Safety Code).*

12 (10) The electrical corporation's risk management policy,
13 strategy, and practices, including specific measures of price
14 stability.

15 (11) A plan to achieve appropriate increases in diversity of
16 ownership and diversity of fuel supply of nonutility electrical
17 generation.

18 (12) A mechanism for recovery of reasonable administrative
19 costs related to procurement in the generation component of rates.

20 (c) The commission shall review and accept, modify, or reject
21 each electrical corporation's procurement plan. The commission's
22 review shall consider each electrical corporation's individual
23 procurement situation, and shall give strong consideration to that
24 situation in determining which one or more of the features set forth
25 in this subdivision shall apply to that electrical corporation. A
26 procurement plan approved by the commission shall contain one
27 or more of the following features, provided that the commission
28 may not approve a feature or mechanism for an electrical
29 corporation if it finds that the feature or mechanism would impair
30 the restoration of an electrical corporation's creditworthiness or
31 would lead to a deterioration of an electrical corporation's
32 creditworthiness:

33 (1) A competitive procurement process under which the
34 electrical corporation may request bids for procurement-related
35 services. The commission shall specify the format of that
36 procurement process, as well as criteria to ensure that the auction
37 process is open and adequately subscribed. Any purchases made
38 in compliance with the commission-authorized process shall be
39 recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing

1 accounts, not less than semiannually, and shall adjust rates or order
2 refunds, as necessary, to promptly amortize a balancing account,
3 according to a schedule determined by the commission. Until
4 January 1, 2006, the commission shall ensure that any
5 overcollection or undercollection in the power procurement
6 balancing account does not exceed 5 percent of the electrical
7 corporation's actual recorded generation revenues for the prior
8 calendar year excluding revenues collected for the Department of
9 Water Resources. The commission shall determine the schedule
10 for amortizing the overcollection or undercollection in the
11 balancing account to ensure that the 5 percent threshold is not
12 exceeded. After January 1, 2006, this adjustment shall occur when
13 deemed appropriate by the commission consistent with the
14 objectives of this section.

15 (4) Moderate the price risk associated with serving its retail
16 customers, including the price risk embedded in its long-term
17 supply contracts, by authorizing an electrical corporation to enter
18 into financial and other electricity-related product contracts.

19 (5) Provide for just and reasonable rates, with an appropriate
20 balancing of price stability and price level in the electrical
21 corporation's procurement plan.

22 (e) The commission shall provide for the periodic review and
23 prospective modification of an electrical corporation's procurement
24 plan.

25 (f) The commission may engage an independent consultant or
26 advisory service to evaluate risk management and strategy. The
27 reasonable costs of any consultant or advisory service is a
28 reimbursable expense and eligible for funding pursuant to Section
29 631.

30 (g) The commission shall adopt appropriate procedures to ensure
31 the confidentiality of any market sensitive information submitted
32 in an electrical corporation's proposed procurement plan or
33 resulting from or related to its approved procurement plan,
34 including, but not limited to, proposed or executed power purchase
35 agreements, data request responses, or consultant reports, or any
36 combination, provided that the Office of Ratepayer Advocates and
37 other consumer groups that are nonmarket participants shall be
38 provided access to this information under confidentiality
39 procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 2. Section 454.51 is added to the Public Utilities Code, to read:

454.51. (a) Each electrical corporation shall file with the commission a proposed fossil fuel procurement plan that complies with the requirements for reducing emissions of greenhouse gases adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). To the extent feasible, the fossil fuel procurement plan shall be

1 *proposed as part of the electrical corporation's proposed*
2 *procurement plan filed with the commission pursuant to Section*
3 *454.5. The fossil fuel procurement plan shall encompass all*
4 *facilities that use fossil fuels for the generation of electricity,*
5 *including short-term and long-term electricity procurement*
6 *contracts, baseload generation, peaking generation, and generation*
7 *resources owned by the electrical corporation.*

8 *(b) The commission shall review and accept, modify, or reject*
9 *each electrical corporation's fossil fuel procurement plan. The*
10 *commission shall, by rulemaking or other appropriate proceeding,*
11 *adopt criteria for the rank ordering and selection of the least-cost*
12 *and best-fit fossil fuel powered generation resources to facilitate*
13 *compliance with the requirements for reducing emissions of*
14 *greenhouse gases adopted by the State Air Resources Board*
15 *pursuant to the California Global Warming Solutions Act of 2006.*
16 *This process shall consider estimates of indirect costs associated*
17 *with needed transmission investments and ongoing expenses*
18 *incurred by the electrical corporation for emissions of greenhouse*
19 *gases resulting from the operation of generating resources utilizing*
20 *fossil fuels. To the extent feasible, the commission shall review*
21 *and accept, modify, or reject the electrical corporation's fossil*
22 *fuel procurement plan as part of the commission's consideration*
23 *of the electrical corporation's proposed procurement plan filed*
24 *pursuant to Section 454.5.*

25 *(c) The commission shall require each electrical corporation*
26 *to review and update its fossil fuel procurement plan as the*
27 *commission determines to be necessary.*

28 ~~SECTION 1. The Legislature finds and declares all of the~~
29 ~~following:~~

30 ~~(a) Combined heat and power systems are recognized by the~~
31 ~~state, the nation, and across the world as clean energy resources~~
32 ~~that greatly reduce emissions of greenhouse gases through the~~
33 ~~efficient use of fuel to produce thermal energy and electricity.~~

34 ~~(b) The State Air Resources Board acknowledges that combined~~
35 ~~heat and power systems will substantially contribute to reducing~~
36 ~~emissions of greenhouse gases and recommends an additional~~
37 ~~4,000 megawatts of installed combined heat and power capacity~~
38 ~~by 2020, in order to achieve 6.7 million metric tons of emissions~~
39 ~~reductions.~~

1 ~~(e) The Economic and Technology Advancement Advisory~~
2 ~~Committee concluded that California has yet to tap the full potential~~
3 ~~of combined heat and power facilities to decrease emissions of~~
4 ~~greenhouse gases and that, while combined heat and power is not~~
5 ~~a new technology, barriers exist that prevent full deployment of~~
6 ~~cost-effective combined heat and power into the industrial and~~
7 ~~commercial sectors.~~

8 ~~(d) The Energy Commission supports combined heat and power~~
9 ~~projects because they offer low levels of greenhouse gas emissions~~
10 ~~for electricity generation, taking advantage of fuel that is already~~
11 ~~being used for other purposes and recommends the state adopt~~
12 ~~measures to reduce emissions of greenhouse gases and regulations~~
13 ~~that fully reflect the benefits of combined heat and power.~~

14 ~~(e) The Public Utilities Commission and the Energy Commission~~
15 ~~jointly advocate that new combined heat and power applications~~
16 ~~could play a large part in avoiding future emissions of greenhouse~~
17 ~~gases due to the combined efficiency of the heat and power portions~~
18 ~~of the systems.~~

19 ~~(f) Despite broad support by public and private entities, the~~
20 ~~development of new combined heat and power resources has~~
21 ~~slowed dramatically over the past decade, and existing resources~~
22 ~~may terminate their operations in the next few years absent~~
23 ~~improvements to existing policy.~~

24 ~~(g) In the absence of legislative action to encourage the retention~~
25 ~~and expansion of combined heat and power systems, commercial~~
26 ~~and industrial energy requirements may be served using less~~
27 ~~efficient, separate thermal and electricity production facilities~~
28 ~~resulting in greater emissions of greenhouse gases.~~

29 ~~SEC. 2. Section 399.15 of the Public Utilities Code is amended~~
30 ~~to read:~~

31 ~~399.15.—(a) (1) In order to fulfill unmet long-term resource~~
32 ~~needs and to achieve the reductions in emissions of greenhouse~~
33 ~~gases required by the California Global Warming Solutions Act~~
34 ~~of 2006 (Division 25.5 (commencing with Section 38500) of the~~
35 ~~Health and Safety Code, the commission shall establish a~~
36 ~~renewables portfolio standard requiring all electrical corporations~~
37 ~~to procure a minimum quantity of electricity generated by eligible~~
38 ~~renewable energy resources as a specified percentage of total~~
39 ~~weighted kilowatthours sold to their retail end-use customers each~~
40 ~~calendar year, subject to limits on the total amount of costs~~

1 expended above the market prices determined in subdivision (c);
2 to achieve the targets established under this article.

3 (2) ~~The total kilowatthours sold to retail end-use customers that~~
4 ~~are generated using fossil fuels shall be weighted linearly based~~
5 ~~upon a rating of the emissions of greenhouse gases per~~
6 ~~megawatthour. The greenhouse gases emission performance~~
7 ~~standard established pursuant to Section 8341 shall serve as the~~
8 ~~base, or point for comparison, for calculating the total weighted~~
9 ~~megawatthours.~~

10 (3) ~~For a combined heat and power system that is an eligible~~
11 ~~facility, as defined in Section 2846, emissions of greenhouse gases~~
12 ~~associated with the thermal output of the combined heat and power~~
13 ~~system, determined by calculating the rate of emissions of~~
14 ~~greenhouse gases per British thermal unit for an 85 percent boiler,~~
15 ~~multiplying the thermal output of the combined heat and power~~
16 ~~system by this rate, and subtracting the result from the total~~
17 ~~emissions of greenhouse gases produced by the combined heat~~
18 ~~and power system, shall not be counted for the purposes of~~
19 ~~paragraph (2).~~

20 (b) ~~The commission shall implement annual procurement targets~~
21 ~~for each retail seller as follows:~~

22 (1) ~~Each retail seller shall, pursuant to subdivision (a), increase~~
23 ~~its total procurement of eligible renewable energy resources by at~~
24 ~~least an additional 1 percent of retail sales per year so that 20~~
25 ~~percent of its retail sales are procured from eligible renewable~~
26 ~~energy resources no later than December 31, 2010. A retail seller~~
27 ~~with 20 percent of retail sales procured from eligible renewable~~
28 ~~energy resources in any year shall not be required to increase its~~
29 ~~procurement of renewable energy resources in the following year.~~

30 (2) ~~For purposes of setting annual procurement targets, the~~
31 ~~commission shall establish an initial baseline for each retail seller~~
32 ~~based on the actual percentage of retail sales procured from eligible~~
33 ~~renewable energy resources in 2001, and to the extent applicable,~~
34 ~~adjusted going forward pursuant to Section 399.12.~~

35 (3) ~~Only for purposes of establishing these targets, the~~
36 ~~commission shall include all electricity sold to retail customers by~~
37 ~~the Department of Water Resources pursuant to Section 80100 of~~
38 ~~the Water Code in the calculation of retail sales by an electrical~~
39 ~~corporation.~~

1 ~~(4) In the event that a retail seller fails to procure sufficient~~
2 ~~eligible renewable energy resources in a given year to meet any~~
3 ~~annual target established pursuant to this subdivision, the retail~~
4 ~~seller shall procure additional eligible renewable energy resources~~
5 ~~in subsequent years to compensate for the shortfall, subject to the~~
6 ~~limitation on costs for electrical corporations established pursuant~~
7 ~~to subdivision (d).~~

8 ~~(e) The commission shall establish a methodology to determine~~
9 ~~the market price of electricity for terms corresponding to the length~~
10 ~~of contracts with eligible renewable energy resources, in~~
11 ~~consideration of the following:~~

12 ~~(1) The long-term market price of electricity for fixed price~~
13 ~~contracts, determined pursuant to an electrical corporation's general~~
14 ~~procurement activities as authorized by the commission.~~

15 ~~(2) The long-term ownership, operating, and fixed-price fuel~~
16 ~~costs associated with fixed-price electricity from new generating~~
17 ~~facilities.~~

18 ~~(3) The value of different products including baseload, peaking,~~
19 ~~and as-available electricity.~~

20 ~~(d) The commission shall establish, for each electrical~~
21 ~~corporation, a limitation on the total costs expended above the~~
22 ~~market prices determined in subdivision (e) for the procurement~~
23 ~~of eligible renewable energy resources to achieve the annual~~
24 ~~procurement targets established under this article.~~

25 ~~(1) The cost limitation shall be equal to the amount of funds~~
26 ~~transferred to each electrical corporation by the Energy~~
27 ~~Commission pursuant to subdivision (b) of Section 25743 of the~~
28 ~~Public Resources Code and the 51.5 percent of the funds which~~
29 ~~would have been collected through January 1, 2012, from the~~
30 ~~customers of the electrical corporation based on the renewable~~
31 ~~energy public goods charge in effect as of January 1, 2007.~~

32 ~~(2) The above-market costs of a contract selected by an electrical~~
33 ~~corporation may be counted toward the cost limitation if all of the~~
34 ~~following conditions are satisfied:~~

35 ~~(A) The contract has been approved by the commission and was~~
36 ~~selected through a competitive solicitation pursuant to the~~
37 ~~requirements of subdivision (d) of Section 399.14.~~

38 ~~(B) The contract covers a duration of no less than 10 years.~~

39 ~~(C) The contracted project is a new or repowered facility~~
40 ~~commencing commercial operations on or after January 1, 2005.~~

1 ~~(D) No purchases of renewable energy credits may be eligible~~
2 ~~for consideration as an above-market cost.~~

3 ~~(E) The above-market costs of a contract do not include any~~
4 ~~indirect expenses including imbalance energy charges, sale of~~
5 ~~excess energy, decreased generation from existing resources, or~~
6 ~~transmission upgrades.~~

7 ~~(3) If the cost limitation for an electrical corporation is~~
8 ~~insufficient to support the total costs expended above the market~~
9 ~~prices determined in subdivision (c) for the procurement of eligible~~
10 ~~renewable energy resources satisfying the conditions of paragraph~~
11 ~~(2), the commission shall allow the electrical corporation to limit~~
12 ~~its procurement to the quantity of eligible renewable energy~~
13 ~~resources that can be procured at or below the market prices~~
14 ~~established in subdivision (c).~~

15 ~~(4) Nothing in this section prevents an electrical corporation~~
16 ~~from voluntarily proposing to procure eligible renewable energy~~
17 ~~resources at above-market prices that are not counted toward the~~
18 ~~cost limitation. Any voluntary procurement involving above-market~~
19 ~~costs shall be subject to commission approval prior to the expense~~
20 ~~being recovered in rates.~~

21 ~~(c) The establishment of a renewables portfolio standard shall~~
22 ~~not constitute implementation by the commission of the federal~~
23 ~~Public Utility Regulatory Policies Act of 1978 (Public Law~~
24 ~~95-617).~~

25 ~~(f) The commission shall consult with the Energy Commission~~
26 ~~in calculating market prices under subdivision (c) and establishing~~
27 ~~other renewables portfolio standard policies.~~

28 ~~SEC. 2. Article 2 (commencing with Section 2846) is added~~
29 ~~to Chapter 8 of Part 2 of Division 1 of the Public Utilities Code,~~
30 ~~to read:~~

31
32 ~~Article 2. Fuel Consumption Efficiency~~
33

34 ~~2846. For purposes of this article, the following terms have~~
35 ~~the following meanings:~~

36 ~~(a) "Eligible customer-generator" means a customer of an~~
37 ~~electrical corporation that uses a combined heat and power system~~
38 ~~with a generating capacity of at least 20 megawatts.~~

1 (b) “Eligible facility” means a combined heat and power system
2 that produces both electricity and thermal energy from a single
3 fuel input that meets both of the following:

4 (1) Is interconnected to the electrical transmission and
5 distribution grid.

6 (2) Is sized to meet the onsite thermal load.

7 2847. The Legislature finds and declares all of the following:

8 (a) Efficient combined heat and power generation is a form of
9 energy efficiency that can benefit the state by:

10 (1) Reducing greenhouse gas emissions and natural gas use.

11 (2) Reducing the need for transmission and distribution
12 investment.

13 (3) Reducing transmission line losses on the state’s electricity
14 grid.

15 (4) Providing a stable and reliable source of in-state baseload
16 generation.

17 (5) Enabling commercial and industrial consumers to control
18 their energy costs.

19 (6) Supporting the economy with in-state investment and jobs.

20 (b) The state has encouraged the use of combined heat and
21 power technology since the enactment of the Warren-Alquist State
22 Energy Resources Conservation and Development Act and assumed
23 an early leadership position nationally in promoting these and other
24 efficient resources.

25 (c) The State Air Resources Board has determined that the
26 widespread development of efficient combined heat and power
27 systems would help displace the need to develop new, or expand
28 existing, power plants and has set a target of an additional 4,000
29 megawatts of installed combined heat and power generation
30 capacity by 2020, enough to displace approximately 30,000
31 gigawatthours of generation from other generation resources.

32 2848. (a) It is the intent of the Legislature to enact policies
33 that incorporate the recommendations of the state’s energy and
34 environmental agencies, commissions, and departments to more
35 fully capture the energy efficiency and greenhouse gases emissions
36 benefits of combined heat and power systems.

37 (b) It is the intent of the Legislature to encourage the addition
38 of new combined heat and power facilities and the repowering of
39 existing combined heat facilities to achieve greater efficiencies

1 wherever—cost-effective,—technologically—feasible,—and
2 environmentally beneficial.

3 (e) ~~It is the intent of the Legislature to support and facilitate~~
4 ~~both customer-owned and utility-owned combined heat and power~~
5 ~~systems.~~

6 2849. ~~(a) The commission shall credit electricity generated~~
7 ~~by an eligible facility for onsite use as energy efficiency for the~~
8 ~~purposes of Section 454.5 and shall prohibit the imposition of~~
9 ~~departing load charges on either of the following:~~

10 (1) ~~Electricity generated by an eligible facility that commences~~
11 ~~operation after January 1, 2010, to meet an eligible~~
12 ~~customer-generator's onsite electrical load.~~

13 (2) ~~Electricity generated by an eligible facility that commenced~~
14 ~~operation prior to January 1, 2010, the increased amount of~~
15 ~~electricity generated as a result of efficiency improvements to meet~~
16 ~~an eligible customer-generator's onsite electrical load.~~

17 (b) ~~The commission shall adopt or maintain standby rates or~~
18 ~~charges for eligible facilities that are based only upon assumptions~~
19 ~~that are supported by factual data, and shall not assume that forced~~
20 ~~outages or other reductions in electricity generation by combined~~
21 ~~heat and power systems will occur simultaneously on multiple~~
22 ~~systems, or during periods of peak electrical system demand, or~~
23 ~~both.~~

24 2849.5. ~~(a) Notwithstanding subdivision (b) of Section 218,~~
25 ~~an eligible customer-generator may construct and operate private~~
26 ~~electrical distribution facilities to be owned and operated by the~~
27 ~~customer-generator to sell excess electricity from an eligible facility~~
28 ~~to up to three other corporations within a three-mile radius of the~~
29 ~~eligible facility without subjecting the project to regulation as a~~
30 ~~public utility, and according the distribution facilities the same~~
31 ~~treatment for safety, zoning, land use, and other legal privileges~~
32 ~~as apply or would apply to the facilities of the utility, subject to~~
33 ~~both of the following:~~

34 (1) ~~There shall be no grant of any power of eminent domain to~~
35 ~~take or cross private property for the facilities.~~

36 (2) ~~The facilities shall be physically segregated and not~~
37 ~~interconnected with any portion of the electrical transmission and~~
38 ~~distribution system of the electrical corporation, except on the~~
39 ~~customer side of the revenue meter of the utility and in a manner~~
40 ~~that precludes any possible export of electricity onto the electrical~~

1 corporation's electrical transmission and distribution system, or
2 disruption of the system.

3 (b) ~~The commission shall prohibit the imposition of departing~~
4 ~~load charges on a corporation for electricity purchased from an~~
5 ~~eligible customer-generator pursuant to paragraph (a).~~

6 (e) ~~The commission shall adopt or maintain standby rates or~~
7 ~~charges for corporations that purchase electricity from an eligible~~
8 ~~customer-generator pursuant to paragraph (a) that are based only~~
9 ~~upon assumptions that are supported by factual data, and shall not~~
10 ~~assume that forced outages or other reductions in electricity~~
11 ~~generation by combined heat and power systems will occur~~
12 ~~simultaneously on multiple systems, or during periods of peak~~
13 ~~electrical system demand, or both.~~

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.